

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Freistatt Post Office
Freistatt, MO

Docket No. A2013-8

PUBLIC REPRESENTATIVE'S REPLY COMMENTS
(September 13, 2013)

The procedural schedule for this docket established a deadline of August 21, 2013, for Petitioner's brief and a deadline of September 4, 2013 for the answering brief in support of the Postal Service.¹ Petitioner filed an initial brief on August 19, 2013.² Although the Public Representative had hoped to review the Postal Service's positions before filing comments in this docket, in order to fairly and impartially evaluate whether closing the Freistatt Post Office is in the interests of the general public, the Postal Service did not file an answering brief.

In effect, the absence of an answering brief is an argument by the Postal Service that the record on review in this docket speaks for itself. Consequently, these reply comments are directed primarily to the sufficiency of the record on review as a basis for the determination to close the Freistatt Post Office.³

I. INTRODUCTION

Section 404(d)(5) of title 39, United States Code, requires the Commission to remand the Postal Service's determination to close the Freistatt Post Office, because the

¹ Order No. 1791, Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 24, 2013, at 5 (Order No. 1791).

² Brief in Support of Appeal to Closing of the Freistatt Post Office, August 19, 2013 (Petitioner's Brief).

³ The record on review should "contain all evidence considered by the Postal Service in making its determination." 39 C.F.R. §3025.20.

determination is “unsupported by substantial evidence on the record” and the Postal Service has acted “without observance of procedure required by law.”⁴ The administrative record (Record) in this docket is unreliable and inconsistent. It also contains conclusions about costs and savings that are unsupported by substantial evidence. Furthermore, the record on review indicates that the Postal Service has failed to consider whether the closing of the Freistatt Post Office is consistent with 39 U.S.C. § 101(b).⁵ Finally, the record on review demonstrates that the Postal Service effectively closed the Freistatt Post Office without providing the notice required by 39 U.S.C. § 404(d).

The Postal Service has not addressed the merits of this case. Instead, it urges the Commission to dismiss the appeal on the basis that it was filed several days out of time. However, the Postal Service has itself failed to comply with statutory and regulatory requirements with respect to this post office closing. In effect, the Postal Service is asking the Commission to find that the fact that an otherwise diligent petitioner filed her appeal a few days out of time carries far more legal and equitable weight than the Postal Service’s repeated failure to comply with substantive and procedural legal requirements.

In the following section, these comments provide a brief overview of the background of this post office closing, including the factual and procedural history and the legal requirements applicable to post office closings. In the third section, they explain the defects of the Record that demonstrate that the Postal Service’s determination to close the Freistatt Post Office is unsupported by substantial evidence on the record. In the fourth section, they argue that the Postal Service has failed to consider the factors described in 39 U.S.C. § 404(d)(2)(A). In the fifth section, they explain why the suspension of the Freistatt Post Office was a de facto closing that deprived affected customers of the 60 days notice required by statute.

⁴ See 39 U.S.C. § 404(d)(5)(B) and (C) (providing that the “Commission shall set aside any determination, findings, and conclusions found to be... without observance of procedure required by law [or] unsupported by substantial evidence on the record.” Emphasis added.).

⁵ In addition, Petitioner’s Brief provides vivid examples of the Postal Service’s failure to take into consideration the effect of the Freistatt Post Office closing on the community and employees, as required by 39 U.S.C. § 404(d)(2)(A)(i) and (ii). The Public Representative will not repeat those examples here.

II. BACKGROUND

A. Factual and Procedural History

The doors of the Freistatt Post Office have been closed since March 29, 2013, when, with 2 days notice to affected customers, the Postal Service suspended the post office on the basis of failed lease negotiations.⁶ For more than 10 weeks after the suspension, customers of the Freistatt Post Office (most of whom received their mail by general delivery before the suspension) did not receive mail delivery service.⁷ Instead, they were obligated to travel approximately 16 miles round-trip to Monett, Missouri, to retrieve their mail and conduct retail transactions. *Id.* The Postal Service installed clusterboxes in Freistatt and began delivering mail to the clusterboxes on or about June 11, 2013. *Id.* at 2. Several days later, the Postal Service posted notice of its final determination to close the Freistatt Post Office. Record, Item 36 at 1.

On July 22, 2013, Petitioner filed an appeal of the closing of the Freistatt Post Office, together with a request to extend the time for filing.⁸ On August 1, 2013, the Postal Service moved to dismiss the appeal.⁹ The Public Representative and Petitioner filed comments opposing the Postal Service's Motion and supporting Petitioner's request to extend the time for filing.¹⁰ Although the Commission's rules generally discourage replies to answers to

⁶ As explained in section III.A., *infra*, the notice of suspension included in the Record as Item 3 is different than the notice provided to Petitioner. See Petitioner's Brief, Exhibit A. The date of the letter included in the Record is March 26, 2013. The date of the letter provided to Petitioner is March 27, 2013.

⁷ Response of United States Postal Service to Order No. 1791, August 1, 2013, at 1.

⁸ Letter from Deborah Schoen, Clerk, Village of Freistatt, to the Postal Regulatory Commission, July 21, 2013 (filed July 22, 2013) (Request).

⁹ Motion of the United States Postal Service to Dismiss Proceedings, August 1, 2013, at 1 (Motion).

¹⁰ Public Representative's Opposition to United States Postal Service Motion to Dismiss and Response in Support of Petitioner's Request to Extend Time for Filing, August 12, 2013 (PR Opposition); Reply to Motion of United States Postal Service to Dismiss Proceedings, August 12, 2013.

motions,¹¹ the Postal Service filed a surreply to the Public Representative and the Petitioner.¹² The Public Representative filed a sur-surreply two days later.¹³

Petitioner filed a brief in support of the appeal on August 19, 2013. The Postal Service did not file an answering brief.

B. Legal Framework

Section 404(d) of title 39, United States Code, establishes the procedures the Postal Service must follow when it chooses to close a post office. The Postal Service's regulations on post office closings (which it calls "discontinuances") are contained in 39 C.F.R. § 241.3, and the Postal Service provides further guidance to its employees in Handbook PO 101.

The statute and the Postal Service's regulations contemplate three distinct phases for post office closings: 1) an initial feasibility study, including a customer questionnaire; 2) a proposal to close, with 60 days for interested persons to submit written comments; and 3) a final determination to close, with 30 days for customers to appeal and 60 days notice before the post office actually closes. 39 U.S.C. § 404(d); 39 C.F.R. § 241.3. In making a determination to close a post office, the Postal Service must consider four factors: the effect on the community; the effect on employees; whether the closing is consistent with 39 U.S.C. § 101(b); and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2).

On appeal, the Commission may remand a determination it finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; without observance of procedure required by law; or unsupported by substantial evidence on the record. 39 U.S.C. § 404(d)(5). The following sections will demonstrate that the Postal

¹¹ "Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed." 39 C.F.R. § 3001.21(b). Rule 21(b) applies to post office closing appeals by virtue of 39 C.F.R. § 3025.2(b).

¹² Surreply of United States Postal Service to the Public Representative's Response and Petitioner Schoen's Reply, August 20, 2013.

¹³ Sur-Surreply to Motion of United States Postal Service to Dismiss Proceedings and Petitioner's Request to Extend Time for Filing, August 22, 2013.

Service's determination to close the Freistatt Post Office is unsupported by substantial evidence on the record and was made without observance of procedure required by law.

III. THE POSTAL SERVICE'S DETERMINATION TO CLOSE THE FREISTATT POST OFFICE IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD

A reliable, adequate, and consistent administrative record is necessary to ensure that the Commission can properly review the Postal Service's determination to close a post office.¹⁴ Without such an administrative record, the Postal Service cannot show that its determination to close a post office is supported by "substantial evidence on the record." See 39 U.S.C. § 404(d)(5)(C).

The Record in this docket is rife with inaccurate and inconsistent statements and documents.¹⁵ Alone, any one of these might have been insufficient to require remand of the Postal Service's determination. Assembled, they result in a record that cannot support a determination to close the Freistatt Post Office.

Furthermore, there is reason to doubt that at least two of the documents included in the Record are accurate representations of the documents that were provided to Freistatt post office customers. Finally, some of the Postal Service's cost and savings conclusions are unsupported by evidence in the Record.

¹⁴ See Docket No. A2012-58, Order No. 1259, Order Remanding Determination, February 24, 2012, at 8 (Order No. 1259) and Docket No. A2012-26, Order No. 1213, Order Remanding Determination, February 8, 2012, at 8.

¹⁵ For example, the proposal to close states: "The Post Office facility had severe building deficiencies that included: No known structural defects." The proposal to close also states that there "are a number of alternate sites within a short radius of this office to provide the sales of stamps and the mailing of most package items." Record Item 17 at 2. It later specifies that "[t]here will no longer be a retail outlet in the community." *Id.* at 3. The Postal Service's website shows that the nearest alternate retail site is Casey's General Store in Monett, MO, which only provides stamp booklets. <https://tools.usps.com/go/POLocatorAction.action> (entered search term "Freistatt, MO").

A. The Administrative Record Contains at Least Two Documents that Appear To Be Inconsistent with Documents Actually Provided to Freistatt Post Office Customers

There are facts in the Record suggesting that the neither the Notice of Suspension nor the cover letter for the questionnaire that appear in the Record is the document actually provided to Freistatt Post Office customers. Unless the Commission can confidently find that the Record is an accurate representation of the Postal Service's basis for its final determination, these unreliable documents should require a remand.

The Notice of Suspension included in the record as Item 3 is dated March 26, 2013, and purports to be a letter from "Harry Belcher" notifying customers that the Freistatt Post Office is "suspended." Record, Item 3. However, Petitioner's Reply includes a letter dated March 27, 2013, signed by Rick Belcher, notifying customers that the Freistatt Post Office is "discontinued." Petitioner's Brief, Exhibit A. The Record version assures customers that until a final determination is made, "we are confident that carrier delivery will continue to provide FREISTATT POST OFFICE customers with effective and regular postal services" and discusses the placement of rural mailboxes. Record, Item 3 at 1. The version included with Petitioner's Brief, on the other hand, does not mention rural delivery at all. Petitioner's Brief, Exhibit A. Instead, it states the Postal Service's intention to "explore alternatives that may allow us to establish a postal presence in Freistatt, as well as provide general delivery into the Freistatt community. Village Post Offices and Collection Box Units are some of the options we are looking into." *Id.* This letter frames the suspension as a final discontinuance, and it does not inform customers that a final determination to close the post office had not yet been made as of March 27, 2013.

Item 10 of the Record purports to be a cover letter accompanying customer surveys distributed as part of the 2011 discontinuance study. The letter in the Record notifies customers that the Postal Service "is conducting a discontinuance feasibility study of facility operations at the Freistatt Post Office into [sic] the Monett Post Office." Record, Item 10 at 1. It describes various services available at the Monett Post Office, which it states "is 7.0 miles

away.” *Id.* However, it appears that at least six Freistatt postal customers received a different cover letter. These customers sought in their written responses to correct “misinformation in the cover letter,” including a statement about the distance from Freistatt to the Kirbyville Post Office and a statement that the Monett Post Office is 3 miles from Freistatt.¹⁶ The letter that appears in the record does not mention Kirbyville, and it clearly states that the Monett Post Office is 7 miles from Freistatt.

These inconsistent documents are significant for at least two reasons. First, they raise serious doubts about the accuracy of the Record the Postal Service provided to the Commission. If the Postal Service has not provided an accurate Record, the Commission cannot evaluate whether the Postal Service’s determination was based on substantial evidence on the record. The potential for damage caused by this inconsistency is especially apparent to the Public Representative, who relied in good faith upon the version of the notice of suspension that appeared in the Record to formulate a legal argument.¹⁷

Second, the inconsistencies raise doubts about the sufficiency of the notice provided to Freistatt post office customers. In Order No. 1259, the Commission found that the fact that the Postal Service identified different administrative offices in its questionnaire and its proposal to close the Deering, MO, post office resulted in insufficient notice to customers of the Deering Post Office and denied them the opportunity to inform the Postal Service of any concerns about the selection of the alternate administrative office. Order No. 1259 at 7. In this docket, the Commission cannot confidently state that the administrative office identified in the questionnaire provided to Freistatt post office customers is the same administrative office identified in the proposal to close the Freistatt Post Office, because it does not know what was actually contained in the questionnaire.

¹⁶ Record, Item 20 at 159, 251, 259, 263, 302, and 323. The Postal Service responded to these concerns by explaining that “Kirbyville information was an error on the form, not related to the Freistatt community.” Record Item 35 at 11.

¹⁷ However, if anything, the letter included in Petitioner’s Brief provides greater support for an argument for equitable estoppel than the letter included in the Record. The letter included in Petitioner’s Brief does not mention that the Freistatt Post Office had been temporarily suspended; instead, it informed customers that the Postal Service had discontinued the post office, skipping entirely over the requirement to provide 60 days notice of a final determination to close. A customer reading that letter would reasonably conclude that a final decision to close the post office had already been made and that there was no opportunity for appeal or reconsideration.

B. The Administrative Record Contains Conclusions about Costs and Savings That Are Unsupported by Substantial Evidence

The proposal to close the Freistatt Post Office cites declining office workload and a steady decline in revenue and/or volume as the reason to study the post office for possible closing or consolidation. Record, Item 17 at 2. However, the proposal also states, “Revenue has seen a slight increase over the last several years. The revenue trend is as follows: FY 07 \$21,759, FY 08 \$22,929, FY 09 \$23,450 and FY 10 \$23,813.” *Id.* Unlike other administrative records filed by the Postal Service, this Record contains no information supporting these claims.¹⁸ Because the Postal Service has presented no evidence of an actual decline in office workload, revenue, or volume, the Commission should find that the determination to study the Freistatt Post Office was unsupported by substantial evidence on the record.

The Postal Service’s analysis of economic savings is also incomplete. The table below compares the 10-year economic savings estimates provided in the proposal to close and the final determination:

| <u>Category</u> | <u>Proposal</u> | <u>Final Determination</u> |
|-------------------------------------|-------------------------|-----------------------------------|
| Building Maintenance | \$0 | \$0 |
| Utilities | \$0 | \$0 |
| Transportation | -\$2,097 | -\$3,591 |
| EAS Craft & Labor | \$756,034 | \$797,993 |
| Contracts | \$0 | \$0 |
| Rent | \$37,056 | \$41,931 |
| Relocation One-Time Cost | \$0 | -\$20,720 |
| <i>Total 10-Year Savings</i> | <i>\$621,471</i> | <i>\$637,250</i> |

¹⁸ For instance, there is no PS Form 150 Postmaster Workload Information, no window transaction record, no record of incoming mail, and no record of dispatched mail. Petitioner asserts that the Postal Service’s revenue data are flawed, but the Record does not contain sufficient information to evaluate that claim.

Some of the changes between the proposal and the final determination may be attributable to increased costs, such as gasoline prices or new labor contracts. However, two items are not sufficiently explained by this Record. First, the Postal Service now expects to save an additional \$41,959 in labor costs. The proposal stated that both a Postmaster and a PMR were assigned to the Freistatt Post Office. Record, Item 17 at 3. At that time, the Postal Service expected that the Postmaster might be moved to another facility and the PMR separated from service. *Id.* The final determination, on the other hand, only identifies a postmaster as an employee and states that the postmaster may be moved to another facility. Record, Item 35 at 13. As a result, the higher savings estimate in the final determination requires explanation: one would expect the Postal Service to realize greater economic savings from closing a post office with two employees than a post office with one employee. Furthermore, the Commission has previously admonished the Postal Service to include in its economic savings estimates only those costs that are likely to be eliminated by the closing.¹⁹ If the postmaster of the Freistatt Post Office has been transferred to another location, it is not clear how the Postal Service expects to realize labor savings with respect to her position.

Second, the relocation costs changed dramatically between the proposal and the final determination, but the Postal Service has not provided an explanation of the reason for the change. It is possible these costs are due to the new clusterbox units erected in connection with the suspension of the post office, but the final determination does not mention the clusterbox units. The costs could also be related to the failed lease negotiations. However, this is pure speculation. There is nothing in the Record to explain the additional relocation costs.

The Commission should remand the determination to the Postal Service for an explanation of the basis for its economic savings estimates.

¹⁹ Docket No. A2011-103, Order No. 1141, Order Remanding Determination, January 18, 2012, at 11 (Order No. 1141).

IV. THE POSTAL SERVICE HAS FAILED TO CONSIDER THE FACTORS DESCRIBED IN 39 U.S.C. § 404(d)(2)(A)

In making a determination to close a post office, the Postal Service must consider four factors: the effect on the community; the effect on employees; whether the closing is consistent with 39 U.S.C. 101(b); and the economic savings to the Postal Service. 39 U.S.C. 404(d)(2). Petitioner's Brief provides vivid examples of the Postal Service's failure to consider the effect of the closing on the community served by, and the employee of, the Freistatt Post Office. Petitioner's Brief at 2-5. In support of Petitioner's position, the Public Representative refers the Commission to section V.C. of its earlier filing in opposition to the Postal Service's motion to dismiss. PR Opposition at 19-21. The inadequacy of the Postal Service's consideration of the economic savings to be obtained from closing the Freistatt Post Office is discussed in section III.B., *supra*.

The Postal Service is also required to consider whether the closing of a post office is "consistent with the policy of the Government, as stated in [39 U.S.C. § 101(b)], that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." 39 U.S.C. § 404(d)(2)(A)(iii). It has failed to do so with respect to the Freistatt Post Office.

There is little doubt that Freistatt is the type of small town described in section 101(b). It is located in rural southwestern Missouri and has a population of approximately 160. Before the suspension of the Freistatt Post Office, most customers of the Freistatt Post Office received their mail by general delivery and could conduct retail transactions at the post office. Upon the closing of the Freistatt Post Office, there will no longer be a retail outlet in Freistatt. Record, Item 17 at 3. Instead, the Postal Service has erected clusterbox units. References to rural delivery and rural mailboxes in the final determination notwithstanding, the Postal Service has apparently declined to establish any alternative form of delivery in Freistatt.²⁰

²⁰ Initial Brief at 7 ("According to District Manager Rick Belcher, CBU's were the only alternative and until the city agreed to install them or an alternative location was found to place them, mail would continue to be held

Nothing in the Record demonstrates that the Postal Service considered how clusterbox units would provide a maximum degree of effective postal services to the people of Freistatt.²¹ The proposal to close and the final determination both repeatedly refer to the replacement service to be provided as “delivery and retail services by rural route service under the administrative responsibility of the Monett Post Office.” Record Item 17 at 2 and 3; *Id.*, Item 35 at 1 and 13. In the final determination, the Postal Service’s response to a customer concern about mail delivery to his house indicated that the rural carrier would deliver mail and packages to a rural mailbox or to the customer’s door. Record Item 35 at 2-3. It also described carriers delivering mail and providing retail services “to a roadside mailbox located close to customers’ residences.” *Id.* at 5. The final determination mentions clusterbox units only in response to an inquiry “about mailbox installation and maintenance,” in which it stated that “[c]luster box units are purchased, installed, and maintained by the Postal Service at no expense to customers.” *Id.* at 6. The proposal mentions clusterbox units only to note, as an advantage of the proposal, that “CBUs can offer the security of individually locked mail compartments.” Record, Item 17 at 2.

Because neither the proposal to close nor the final determination propose to provide service to the entire town of Freistatt by means of a single clusterbox unit, the Postal Service cannot, on this Record, demonstrate that it has considered whether such a delivery method satisfies the policy expressed in 39 U.S.C. § 101(b). It has also deprived Freistatt Post Office customers of an opportunity to express concerns with this method of delivery. See Order No. 1141 at 11. A reasonable customer of the Freistatt Post Office reading the material provided by the Postal Service would not be able to conclude that she would be receiving mail by means of a single, town-wide clusterbox unit rather than to a mailbox located close to her

at the Monett Post Office for patrons to pick up their mail.”). The Record does not appear to contradict this statement.

²¹ In response to a customer inquiry about door delivery, the Postal Service asserted that the “proposed alternate delivery service will meet the mailing and service needs of the community in a more cost effective manner.” Record, Item 35 at 5. It did not explain what the proposed alternate delivery service was.

home or business.²² Delivery to a rural mailbox located down the road from an individual business or family's home is significantly different from delivery to a single clusterbox unit in the middle of town, in terms of the amount of time necessary to retrieve the mail or conduct retail transactions from the box and in terms of the perceived security of the customer's mail (which may influence a customer's decision about whether to engage the services of one of the Postal Service's competitors).

Because the Postal Service has failed to consider the factors described in 39 U.S.C. § 404(d)(2)(A), and deprived customers of the opportunity to comment on the alternate delivery method, the Commission should remand the Postal Service's determination to close the Freistatt Post Office.

V. THE POSTAL SERVICE FAILED TO PROVIDE ADEQUATE NOTICE OF ITS DETERMINATION TO CLOSE THE FREISTATT POST OFFICE

The Postal Service has failed to provide adequate notice of its determination to close the Freistatt Post Office. The Public Representative has already argued that the Postal Service's posting of the notice of final determination violated 39 C.F.R. § 241.3(g)(1)(i) and will not repeat that argument here. PR Opposition at 13-15. On that basis, the Commission should find that the inadequate posting was without observance of the procedures required by law and remand the Postal Service's determination.

The Commission should also find that the emergency suspension of the Freistatt Post Office, followed shortly by a final determination to close the Freistatt Post Office, with no intervening initial feasibility study or proposal to close, was without observance of the

²² Nothing in the Record of the material provided to Freistatt Post Office customers describes precisely (or even generally) what the Postal Service meant by "delivery and retail services by rural route service." A visit to the Postal Service's Frequently Asked Questions webpage provides little additional guidance, except to state that "rural delivery is provided according to USPS policies and procedures, the characteristics of the area to be served, and the methods needed to provide adequate service" and that "specific questions regarding Rural Delivery are handled by the particular postal unit involved with that route and with the rural carrier delivering to that route. <http://faq.usps.com/adaptivedesktop/faq.jsp?ef=USPSFAQ> (*Select Browse Topics then Receiving Mail to Ways to Receive Mail then Mail Delivery Service then What are the General Guidelines for Rural Delivery*). There is no mention of clusterboxes on this webpage. Section 508.2.2 of the Domestic Mail Manual contains similar language, and appears to contemplate delivery to customers' individual mailboxes.

procedures required by law. It is important to note that title 39, United States Code, does not provide for emergency suspensions of post offices. The procedure contemplated by the Postal Service's regulations and Handbook PO-101 is that a suspension based on failed lease negotiations would be preceded by the initiation of a feasibility study, in order to allow a meaningful opportunity for public input.²³ The Postal Service did not allow a meaningful opportunity for public input about the Freistatt Post Office closing, nor did it explain why it was not possible to initiate the discontinuance process in advance of the lease expiration date. Instead, it relied on a feasibility study conducted nearly two years prior to the suspension that contained outdated and inconsistent information.

Procedural rules exist for practical purposes. Some, like filing deadlines, allow courts and parties to better organize their schedules. Some, like notice requirements, protect the due process rights of affected persons. In evaluating the Postal Service's compliance with the notice requirements of 39 U.S.C. § 404(d), the Commission should be asking whether the Postal Service's behavior fulfills the practical purpose intended by the statute, not whether the semantic distinction between a suspension and a closing (a distinction created by the Postal Service, not by statute) allows the Postal Service to disregard statutory notice requirements.

For all practical purposes, the Freistatt Post Office is already closed. The emergency suspension was, from the point of view of the customers of the Freistatt Post Office, indistinguishable from a closing. In fact, if the letter included with Petitioner's Brief is accurate, the Postal Service presented the suspension to customers as discontinuance, not a suspension. Petitioner's Brief, Attachment A. The Record contains no indication that the Postal Service viewed re-opening the Freistatt Post Office after the emergency suspension as a real possibility.

The Public Representative does not expect the Commission to adopt a blanket rule that all emergency suspensions are de facto closings. There are certainly situations, such as

²³ Handbook PO-101, section 617 ("Wherever possible, when an initial feasibility study is to be initiated due to an emergency suspension, initiate the discontinuance process sufficiently in advance of the circumstance prompting the emergency suspension (for example, anticipated cancellation of a lease or rental agreement) to allow a meaningful opportunity for public input to be taken into account before services are suspended.")

natural disasters, in which an emergency suspension is the best course of action, and in some of those situations closing the post office may be in the public interest. In this docket, however, the Postal Service was a party to the lease of the Freistatt Post Office and had knowledge of the lease expiration date and leverage in the lease renewal negotiations. Instead of initiating proceedings and providing notice in advance of the lease expiration, the Postal Service chose to suspend the Freistatt Post Office with 2 days notice.

The Postal Service effectuated a de facto closing of the Freistatt Post Office when it suspended that facility on March 29, 2013. The Commission should find that this action deprived Freistatt Post Office customers of the notice required by 39 U.S.C. § 404(d) and remand the determination to close on the basis that it was made without observance of the procedure required by law.

VI. CONCLUSION

The Commission's determination in this docket will be made in the context of the extremely difficult financial situation facing the Postal Service.²⁴ However, a difficult financial situation does not provide *carte blanche* for the Postal Service to disregard its statutory responsibilities. Unlike 39 U.S.C. § 3622, which contains a provision allowing the Postal Service to make rate adjustments outside the normal price cap framework in extraordinary or exceptional circumstances,²⁵ 39 U.S.C. § 404(d) does not allow the Postal Service to follow different procedures for post office closings simply because it is experiencing financial pressures. At a time when the Postal Service is making hard choices to close post offices and make adjustments to delivery methods, it is more important than ever that it demonstrate that its decisions are based on substantial evidence and made in accordance with the procedures established by law. Reasoned decision making increases public confidence that

²⁴ For the third quarter of fiscal year 2013, the Postal Service reported a year-to-date net loss of \$3.9 billion, which it attributed to the prefunding requirement for retiree health benefits, the continuing decline of First-Class Mail volume, and the obligation to provide 6-day-a-week mail delivery. Current Report on Form 8-K "containing the information prescribed in Form 8-K of the Securities and Exchange Commission." 39 U.S.C. § 3654(a)(1)(C), August 9, 2013, Exhibit 99.1 at 1.

²⁵ See Docket No. R2010-4, Order No. 547, Order Denying Request for Exigent Rate Adjustments, September 30, 2010, at 13-14 (describing § 3622(d)(1)(E) as a "safety valve" provision).

the Postal Service is carefully weighing its obligation to “apportion the costs of all postal operations to all users of the mail on a fair and equitable basis” against its obligation to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.” 39 U.S.C. § 101(b) and (d). A solvent and financially stable Postal Service is in the public interest, but so, too, is a Postal Service that takes its statutory responsibilities seriously.

By affirming the Postal Service’s determination to close the Freistatt Post Office, the Commission would be affirming the following principles:

- The Postal Service may base its determination to close a post office on an unreliable, insufficient, and inconsistent administrative record.
- The Postal Service will be deemed to have properly considered whether it is providing a maximum degree of effective and regular postal services to a community when, upon the closing of a post office, it implements a form of delivery and retail service not contemplated by the proposal to close the post office or the final determination to close the post office.
- The Postal Service may use an emergency suspension based on failed lease negotiations to effectuate a de facto closing of a post office and to suspend delivery and retail service to a community for more than seven weeks.

None of these principles is consistent with 39 U.S.C. § 404(d). The Public Representative respectfully urges the Commission to remand the final determination to close the Freistatt Post Office.

Respectfully submitted,

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